House Calendar No. 13

108TH CONGRESS
1ST SESSION

H. RES. 132

[Report No. 108–41]

Expressing the sense of the House of Representatives that the Ninth Circuit Court of Appeals ruling in Newdow v. United States Congress is inconsistent with the Supreme Court's interpretation of the first amendment and should be overturned, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 2003

Mr. OSE (for himself, Mr. SENSENBRENNER, Mr. CHABOT, Mr. CUNNINGHAM, Mr. CARDOZA, Mr. HERGER, Mr. OTTER, Mr. DOOLITTLE, Mrs. NAPOLITANO, Mr. PORTER, Mr. FRANKS of Arizona, Mr. OXLEY, Mr. HENSARLING, Mrs. BONO, Mr. KENNEDY of Minnesota, Mr. WALSH, Mr. BARRETT of South Carolina, Mr. ISAKSON, Mr. EVERETT, Mr. GARY G. MILLER of California, Mr. FROST, Mr. ROGERS of Alabama, Mr. HAYES, Mr. WILSON of South Carolina, Mr. RENZI, Mr. FOLEY, Mr. NEY, Mr. BEAUPREZ, Mrs. CAPITO, Mrs. NORTHUP, Ms. GINNY BROWN-WAITE of Florida, Mr. CHOCOLA, Mr. SHUSTER, Mr. BURNS, Mr. HAYWORTH, Mr. MATHESON, Mr. STEARNS, Mr. SWEENEY, Mr. GERLACH, Mr. GOODE, and Mr. NUNES) submitted the following resolution; which was referred to the Committee on the Judiciary

MARCH 18, 2003

Additional sponsors: Mr. POMBO, Mr. GINGREY, Mr. SHAYS, Mr. HASTINGS of Washington, Mr. CANNON, Mr. SESSIONS, Mr. FORBES, Mr. JANKLOW, Mr. CARSON of Oklahoma, Mrs. JO ANN DAVIS of Virginia, Mr. HOSTETTLER, Mr. MCHUGH, Mr. GOODLATTE, Mr. BAKER, Mr. YOUNG of Alaska, Mr. DAVIS of Tennessee, Mr. DUNCAN, Mr. BUYER, Mr. COMBEST, Mr. ROGERS of Michigan, Mr. CALVERT, Mr. HOBSON, and Mr. REYNOLDS

MARCH 18, 2003

Referred to the House Calendar and ordered to be printed

RESOLUTION

Expressing the sense of the House of Representatives that the Ninth Circuit Court of Appeals ruling in Newdow v. United States Congress is inconsistent with the Supreme Court's interpretation of the first amendment and should be overturned, and for other purposes.

Whereas on June 26, 2002, the Ninth Circuit Court of Appeals, in Newdow v. United States Congress (292 F.3d 597; 9th Cir. 2002) (Newdow I), held that the Pledge of Allegiance to the Flag as currently written to include the phrase, ''one Nation, under God'', unconstitutionally endorses religion, that such phrase was added to the pledge in 1954 only to advance religion in violation of the establishment clause, and that the recitation of the pledge in public schools at the start of every school day coerces students who choose not to recite the pledge into participating in a religious exercise in violation of the establishment clause of the first amendment;

Whereas on February 28, 2003, the Ninth Circuit Court of Appeals amended its ruling in this case, and held (in Newdow II) that a California public school district's policy of opening each school day with the voluntary recitation of the Pledge of Allegiance to the Flag ''impermissibly coerces a religious act'' on the part of those students who choose not to recite the pledge and thus violates the establishment clause of the first amendment;

Whereas the ninth circuit's ruling in Newdow II contradicts the clear implication of the holdings in various Supreme Court cases, and the spirit of numerous other Supreme Court cases in which members of the Court have explic-

itly stated, that the voluntary recitation of the Pledge of Allegiance to the Flag is consistent with the first amendment;

Whereas the phrase, ''one Nation, under God'', as included in the Pledge of Allegiance to the Flag, reflects the notion that the Nation's founding was largely motivated by and inspired by the Founding Fathers' religious beliefs;

Whereas the Pledge of Allegiance to the Flag is not a prayer or statement of religious faith, and its recitation is not a religious exercise, but rather, it is a patriotic exercise in which one expresses support for the United States and pledges allegiance to the flag, the principles for which the flag stands, and the Nation;

Whereas the House of Representatives recognizes the right of those who do not share the beliefs expressed in the pledge or who do not wish to pledge allegiance to the flag to refrain from its recitation;

Whereas the effect of the ninth circuit's ruling in Newdow II will prohibit the recitation of the pledge at every public school in 9 states, schooling over 9.6 million students, and could lead to the prohibition of, or severe restrictions on, other voluntary speech containing religious references in these classrooms;

Whereas rather than promoting neutrality on the question of religious belief, this decision requires public school districts to adopt a preference against speech containing religious references;

Whereas the constitutionality of the voluntary recitation by public school students of numerous historical and founding documents, such as the Declaration of Independence, the Constitution, and the Gettysburg Address, has been

placed into serious doubt by the ninth circuit's decision in Newdow II;

Whereas the ninth circuit's interpretation of the first amendment in Newdow II is clearly inconsistent with the Founders' vision of the establishment clause and the free exercise clause of the first amendment, Supreme Court precedent interpreting the first amendment, and any reasonable interpretation of the first amendment;

Whereas this decision places the ninth circuit in direct conflict with the Seventh Circuit Court of Appeals which, in Sherman v. Community Consolidated School District (980 F.2d 437; 7th Cir. 1992), held that a school district's policy allowing for the voluntary recitation of the Pledge of Allegiance to the Flag in public schools does not violate the establishment clause of the first amendment;

Whereas Congress has consistently supported the Pledge of Allegiance to the Flag by starting each session with its recitation;

Whereas the House of Representatives reaffirmed support for the Pledge of Allegiance to the Flag in the 107th Congress by adopting House Resolution 459 on June 26, 2002, by a vote of 416–3; and

Whereas the Senate reaffirmed support for the Pledge of Allegiance to the Flag in the 107th Congress by adopting Senate Resolution 292 on June 26, 2002, by a vote of 99–0: Now, therefore, be it

Resolved, that it is the sense of the House of Representatives that—

(1) the phrase ''one Nation, under God,'' in the Pledge of Allegiance to the Flag reflects that religious faith was central to the Founding Fathers and thus to the founding of the Nation;

(2) the recitation of the Pledge of Allegiance to the Flag, including the phrase, ''one Nation, under God,'' is a patriotic act, not an act or statement of religious faith or belief;

(3) the phrase ''one Nation, under God'' should remain in the Pledge of Allegiance to the Flag and the practice of voluntarily reciting the pledge in public school classrooms should not only continue but should be encouraged by the policies of Congress, the various States, municipalities, and public school officials;

(4) despite being the school district where the legal challenge to the pledge originated, the Elk Grove Unified School District in Elk Grove, California, should be recognized and commended for their continued support of the Pledge of Allegiance to the Flag;

(5) the Ninth Circuit Court of Appeals ruling in Newdow v. United States Congress has created a split among the circuit courts, and is inconsistent with the Supreme Court's interpretation of the first

amendment, which indicates that the voluntary recitation of the pledge and similar patriotic expressions is consistent with the first amendment;

(6) the Attorney General should appeal the ruling in Newdow v. United States Congress, and the Supreme Court should review this ruling in order to correct this constitutionally infirm and historically incorrect holding; and

(7) the President should nominate and the Senate should confirm Federal circuit court judges who interpret the Constitution consistent with the Constitution's text.

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